

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80363; File No. SR-NYSEArca-2017-13)

April 3, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Schedule of Fees and Charges

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 20, 2017, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's "Schedule of Fees and Charges" to add new Commentary .6 relating to waiver of the Annual Fee for an issuer that transfers its listing of securities to the Exchange from another national securities exchange, effective March 20, 2017. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Exchange's Schedule of Fees and Charges ("Schedule") to add new Commentary .6 relating to waiver of the Annual Fee for an issuer that transfers the listing of its securities to the Exchange from another national securities exchange, effective March 20, 2017, as described below.

Currently, note 8 to the Schedule provides that issues are subject to Annual Fees in the year of listing, pro-rated based on days listed that calendar year. Thus, if an issuer transfers its listing from another national securities exchange to the Exchange, the issuer is billed for a pro-rated amount of the Annual Fee in the year of listing.

The Exchange proposes to add Commentary [sic] .6 to the Schedule to provide that an issuer that transfers the listing of its securities from another national securities exchange would not be subject to the Annual Fee for the remainder of the calendar year following the date of listing on the Exchange.

The proposed waiver of the Annual Fee would apply as of March 20, 2017 and would not apply retroactively to transfers prior to such date.

The Exchange believes that waiver of the Annual Fees in the circumstances described above is appropriate because issuers incur substantial legal and administrative costs in connection with delisting from one exchange and listing on another. Waiver of Annual Fees during the time frame specified above would partially offset such transfer costs. In addition, the proposed waiver would apply to all issuers of securities that transfer listing to the Exchange.

Therefore, the Exchange believes there would be no unfair discrimination against issuers of securities listed on the Exchange.

The Exchange notes that the market for listings is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. An issuer may have previously incurred listing and/or annual fees in connection with listing on another exchange. Therefore, such issuer may incur multiple listing and/or annual fees in the same year in connection with a listing transfer, which may operate as a disincentive to transferring to an exchange that the issuer determines is preferable based on the issuer's assessment of the exchange's services, value and market quality.

Notwithstanding the waiver of the Annual Fee, as described above, the Exchange will continue to be able to fund its regulatory obligations.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)⁴ of the Act, in general, and Section 6(b)(4)⁵ of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. In addition, the Exchange believes the proposal is consistent with the requirement under Section 6(b)(5)⁶ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposal represents an equitable allocation of fees and is not unfairly discriminatory because the proposed amendment would enable all issuers transferring from any other national securities exchange to benefit from the same waiver with respect to Annual Fees for a specified time period. The proposed waiver would apply to all issuers of securities that transfer listings to the Exchange. Therefore, the Exchange believes there would be no unfair discrimination against issuers of securities transferring listings to the Exchange.

In addition, the Exchange believes that the proposed waiver is not unfairly discriminatory with respect to issuers that are already listed on the Exchange because issuers transferring from other markets may already have paid listing and/or annual fees at their predecessor market and may incur multiple listing and/or annual fees in the same year in connection with a listing transfer, which may operate as a disincentive to transferring a listing to an exchange that the issuer determines is preferable based on the issuer's assessment of an exchange's services, value and market quality. Due to the very limited anticipated loss of revenue associated with the proposed waiver, the Exchange does not expect the proposed fee waiver to affect its ability to devote the same level of resources to its oversight of its listed issues that benefit from the waiver as it does for other issuers or, more generally, impact its resource commitment to its regulatory oversight of the listing process or its regulatory programs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change is designed to enable all issuers of securities that transfer listing from any other national securities exchange to benefit from the same waiver with respect to Annual Fees for a specified time period. Issuers have the option to list their securities on alternative venues based on the fees charged and the value provided by such venue. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee change imposes a burden on competition. In addition, the waiver of Annual Fees as described herein would apply equally to all issuers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2017-13 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2017-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE,

⁹ 15 U.S.C. 78s(b)(2)(B).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

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Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).